

In the High Court of Judicature at Madras

Dated:10.11.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

Civil Revision Petition (PD) Nos.736 & 737 of 2006
and C.M.P.No.7067 of 2006

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1. Tmt. Krishnaveni
2. Venkatraman
3. Karunanidhi
4. Tmt. Chinammal @ Jaya
5. Latha

.. Petitioners in
both the CRPs.,

vs.

Gopal Pandithar

.. Respondent in
both the CRPs.,

Revision Petitions filed under Article 227 of the Constitution of India against the orders dated 07.02.2006 made in I.A.Nos.62 and 63 of 2006 respectively in O.S.No.116 of 2001 on the file of Additional District Munsif-cum-Judicial Magistrate, Chengam.

For petitioners : Mr. T.S. Sivagnanam

For respondent : Mr. V. Lakshminarayanan

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COMMON ORDER

The defendants in O.S.No.116 of 2001 on the file of Additional District Munsif-cum-Judicial Magistrate, Chengam are the revision petitioners. The plaintiff/respondent herein filed the said suit for declaration and delivery of possession of the suit property. The defendants filed a written statement disputing the claim of the plaintiff. After examination of D.W.1 on the side of the defendants, the plaintiff has filed two applications, one to recall D.W.1 and another to reopen the evidence on the side of defendants. In the affidavits filed in support of the above petitions, it is stated that the suit is in part-heard stage and the evidence on the side of defendants was closed and DWs.1 and 2 were examined and the suit was posted for plaintiff's side evidence. It is further stated that the

counsel on record omitted to put some vital questions to DW.1; hence, it is just and necessary to reopen the evidence on the side of the defendants. The said applications were resisted by the defendants by filing counter affidavit wherein it is stated that in view of the stand taken by the defendants, their witnesses were examined first and after closing their side, plaintiff also examined PWs.1 to 5 on his side and at this stage, the plaintiff has filed the present applications, in order to set right the loopholes, which cannot be allowed.

2. The learned Additional District Munsif-cum-Judicial Magistrate, finding that defendants had closed their side and the present petitions were filed even after the evidence on the side of plaintiff was over, considering the averment that some vital aspects have not been clarified to DW.1, allowed both the applications, in the interest of justice by awarding costs of Rs.100/-. Questioning the same, the present revisions have been filed.

3. Heard Mr. T.S. Sivagnanam, learned counsel for the petitioners and Mr. V. Lakshminarayanan, learned counsel for the respondent.

4. It is not in dispute that both the plaintiff and defendants have closed their evidence and at that stage, contending that certain aspects have not been clarified by DW.1, present applications have been filed for reopening the evidence and recalling DW.1. It is also averred that the said omission is not intentional, but bona fide and it is a mistake committed by the counsel. Relying on various decisions, Mr. T.S. Sivagnanam, learned counsel for the petitioners vehemently contended that the order permitting the plaintiff to reopen the defendants' side and recall DW.1 merely on the ground of "interest of justice" cannot be sustained, in view of the decision of the Apex Court in the case of Salem Advocate Bar Association, Tamil Nadu vs. Union of India reported in 2005 (6) SCC 344 wherein the legal position as well as power of the Court even after amendment of CPC, particularly, Order VI Rule 17 was clarified, but, I am unable to accept his contention. In the said decision, their Lordships have explained the position in respect of Order VI Rule 17 CPC, which reads as under:

"26. Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some

extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."

5. It is therefore clear that even after commencement of trial, application for amendment is maintainable; however, it is the responsibility of the party, who file such application, to satisfy the Court that there is bona fide in his application and the same is filed not to delay the trial. In the case on hand, it is specifically asserted that by mistake, the counsel has omitted to put some vital questions to DW.1 which was accepted by the learned District Munsif and allowed the petitions with costs of Rs.100/- considering the inconvenience caused to the other side/defendants. In view of the legal position as clarified in the Second Salem Advocate Bar Association case by the Hon'ble Supreme Court (cited supra), and of the fact that the Court below has exercised its jurisdiction judicially, in the interest of justice, I am not inclined to interfere with the orders impugned. Consequently, both the revision petitions fail and the same are dismissed. No costs. Consequently, connected C.M.P.is closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Additional District Munsif-cum-
Judicial Magistrate,
Chengam.

1 cc to Mr.T.S.Sivagnanam, Advocate, SR.54375

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dv/14.12.06

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